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MAILED

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OFFICE OF PETITIONS

In re Application of :
Hadad, Zion :
Application No. 09/624,237 :
Filed: July 24, 2000 :
Attorney Docket No. 18023.1050 :

ON PETITION

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed October 28, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

Where there is a question as to whether either the abandonment or the delay in filing a petition, under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.²

The instant petition continues to lack item(s) (3).

As stated previously, there are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

¹ In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

² See MPEP 711.03(c)(III)(C) and (D).

- (1) the delay in reply that originally resulted in the abandonment;
- (2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and
- (3) the delay in filing a grantable petition from the date of receipt of the first decision on petition to revive mailed September 26, 2005, pursuant to 37 CFR 1.137(b) to revive the application.

The delay has still not been shown to the satisfaction of the Director to be unintentional for period (3).

Petitioner claims the reason for the almost three year delay in responding to the Petition Decision mailed September 26, 2005 was due to non-receipt of the decision. Petitioner also states that the Office did not respond to the applicant's request for a copy of the September 2004 Office action, therefore not allowing the applicant a chance to properly respond.

First, the showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.

2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

In the absence of any irregularity there is a strong presumption that the communications were properly mailed to the applicant at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communications was not in fact received.

Second, on page two of the petition decision mailed in September 2005, it clearly states that a copy of the Office action is enclosed for petitioner's convenience. Further, the copy enclosed was merely a courtesy copy of the Office action and holds no bearing over the unintentional delay issue.

The applicant also states that the Office took “over 4 years to initially respond to my filing of the application,” which justifies the applicant not following up on the petition to revive for nearly 3 years. Decisions on reviving abandoned applications have adopted the “reasonably prudent person” standard when examining the delay in responding to an Office action. This requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. The applicant did not check on the status of her patent in almost 3 years time. This does not convey that the applicant held his patent application as his most important business. Any explanation submitted should also include a thorough discussion as to why applicant filed a petition to revive the abandoned application but did not follow up on the status of that petition for close to three years.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
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By hand: Customer Window located at:
U.S. Patent and Trademark Office
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By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions